

The respondent requests review of whether claimant's current need for medical treatment is causally related to her March 8, 2004 work-related accident. Respondent argues the persuasive medical evidence, based upon the opinions of Drs. Kenneth A. Jansson and Roger W. Hood, supports the conclusion that claimant's current need for a

total knee replacement was not caused by the accident on March 8, 2004, and is instead a natural and probable consequence of her preexisting knee condition.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant sustained a knee injury in a vehicle accident in 1997. She suffered a comminuted intraarticular supracondylar left femur fracture that was treated with open reduction and internal fixation consisting of a compression screw plate. She returned to work in 2002 as a CNA for respondent in a nursing home when she suffered an injury on March 8, 2004, while lifting a heavy patient. Claimant felt something give in her knee and then experienced severe pain which inhibited her ability to bend her knee and walk.

Claimant was provided conservative care including physical therapy. On April 19, 2004, Dr. Kenneth A. Jansson examined the claimant. The doctor noted:

In terms of causation, I do not think there is any question that the vast majority, perhaps 99.99%, of this problem is related to her pre-existing car accident and subsequent surgery by Dr. Siwek. However, I cannot say that this episode she describes on 03/08/2004 may not have exacerbated her condition by some percentage greater than 0%.¹

After a follow-up visit with claimant on May 10, 2004, Dr. Jansson again noted that the vast majority of claimant's problems were preexisting. The doctor released claimant to work with restrictions of no squatting, kneeling or climbing off the ground and noted that he did not see any evidence of any new problems.

Claimant then sought additional treatment from Dr. Christopher W. Siwek. Dr. Siwek provided additional conservative care to claimant from June 2004 through September 2004 with no improvement in claimant's condition. In a letter dated March 3, 2005, Dr. Siwek noted that despite the post-traumatic osteoarthritis claimant had in her left knee as a result of the automobile accident she had been able to work until she suffered the accident at work and he further opined:

Even though most of her problems are related to the trauma she sustained during the auto accident, I believe that the further damage to the articulating surface

¹ P.H. Trans., Cl. Ex. 3.

caused her inability to ambulate. The further aggravation of her knee joint significantly limited her ability to return to the status prior to March 8, 2004.²

Dr. Siwek concluded that claimant would not be able to return to gainful employment without a knee replacement and removal of the hardware from her previous surgery.

As a result, the parties agreed to refer claimant to Dr. Roger W. Hood for an independent medical evaluation on January 12, 2005. Dr. Hood noted that the lifting incident at work might have caused a temporary aggravation of a preexisting condition but the need for a total knee replacement and removal of hardware is totally related to the motor vehicle accident and not her work as a CNA. The doctor opined:

It is my impression that all of her problems are related to her motor vehicle accident. I think her patella femoral pain that she had lifting the heavy patient caused a temporary aggravation of a pre-existing condition. I do not think it has permanently accelerated it. I feel all medical care should be covered by her health insurance and not workers compensation.³

Finally, the doctor recommended that claimant's treatment should begin with removal of the hardware and increase the range of motion in her quadriceps before proceeding with a total knee replacement.

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.⁴ The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.⁵ A workers compensation claimant's testimony alone is sufficient evidence of the claimant's physical condition.⁶

The record demonstrates that despite her preexisting condition the claimant was able to perform her work for respondent. There is no indication in the record that she was receiving any treatment for her leg while she worked as a CNA for respondent. Although

² *Id.*, Cl. Ex. 1.

³ *Id.*, Cl. Ex. 2.

⁴ *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

⁵ *Hanson v. Logan U.S.D.* 326, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

⁶ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92.

she may well have had episodic pain in her knee and some range of motion problems, Dr. Jansson's records indicate that claimant also stated her knee was essentially normal before the incident at work on March 8, 2004. After the work-related incident claimant continues to complain of pain with weight bearing and difficulty walking. Stated another way, the claimant's preexisting condition was sufficiently asymptomatic that she was able to work until the March 8, 2004 incident at work. That is no longer the case.

The ALJ was persuaded by Dr. Siwek's opinion that claimant had permanently aggravated her preexisting condition as demonstrated by the fact that claimant was able to perform her daily activities and work until the work-related accident on March 8, 2004. The Board agrees and affirms.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁷

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 8, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July 2005.

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁷ K.S.A. 44-534a(a)(2).